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(PRE-FILED)

By: Chairman, Judicial Proceedings Committee (Departmental - Public Safety and Correctional Services)

Requested: November 7, 2001

Introduced and read first time: January 9, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1	AT		•
I	AN	ACT	concerning

2 Criminal Procedure - Expungement - Law Enforcement Unit

- 3 FOR the purpose of including the State Prosecutor in the definition of "law
- 4 enforcement unit" as it is used in provisions of law relating to the expungement
- of certain court or police records; and generally relating to expungement of court
- 6 and police records.
- 7 BY repealing and reenacting, with amendments,
- 8 Article Criminal Procedure
- 9 Section 10-101
- 10 Annotated Code of Maryland
- 11 (2001 Volume)
- 12 BY repealing and reenacting, without amendments,
- 13 Article Criminal Procedure
- 14 Section 10-102 through 10-105
- 15 Annotated Code of Maryland
- 16 (2001 Volume)
- 17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 18 MARYLAND, That the Laws of Maryland read as follows:

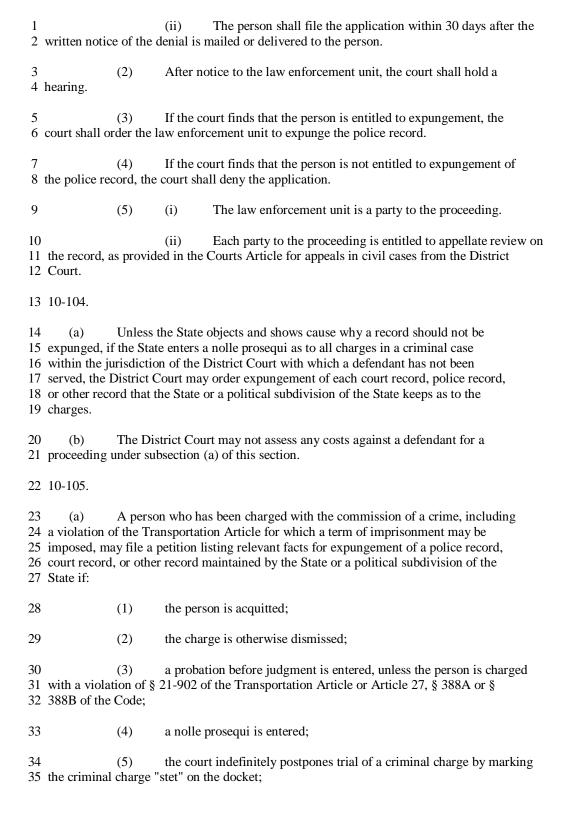
19 Article - Criminal Procedure

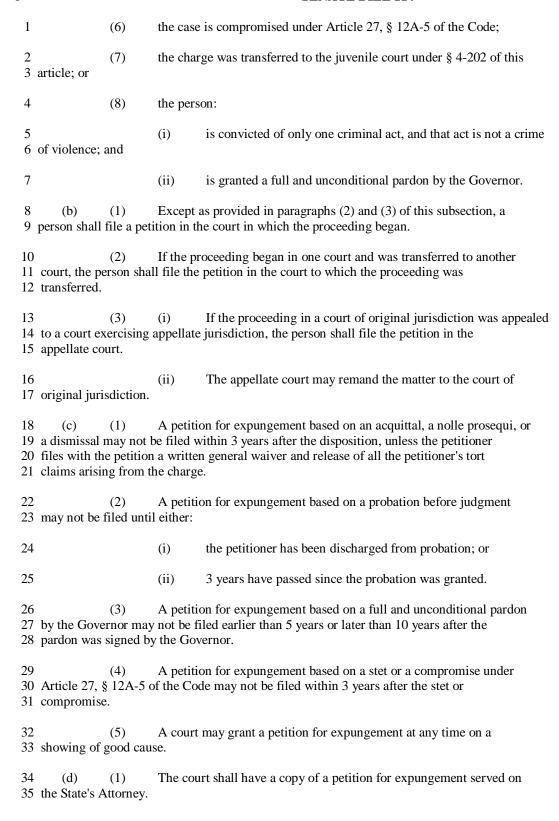
- 20 10-101.
- 21 (a) In this subtitle the following words have the meanings indicated.
- 22 (b) "Central Repository" means the Criminal Justice Information System
- 23 Central Repository in the Department.
- 24 (c) "Court record" means an official record of a court about a criminal
- 25 proceeding that the clerk of a court or other court personnel keeps.

1		(2)	"Court record" includes:
2 3	term of impri	isonment	(i) a record of a violation of the Transportation Article for which a may be imposed; and
	memorandun judgment.	n, transcr	(ii) an index, docket entry, charging document, pleading, iption of proceedings, electronic recording, order, and
7 8	(d) accordance w		ge" means to remove information from public inspection in subtitle.
9 10	(e) removal from		gement" with respect to a court record or a police record means inspection:
11		(1)	by obliteration;
12 13	have a legiti	(2) mate reas	by removal to a separate secure area to which persons who do not son for access are denied access; or
	reference to of it that pro		if access to a court record or police record can be obtained only by court record or police record, by the expungement of it or the part cess.
		or unit, th	forcement unit" means a State, county, or municipal police ne office of a sheriff, the office of a State's Attorney, THE OFFICE OSECUTOR, or the office of the Attorney General of the State.
20 21	\C/		traffic violation" means a nonincarcerable violation of the aw or any other traffic law, ordinance, or regulation.
		ility, or tl	record" means an official record that a law enforcement unit, ne Central Repository maintains about the arrest and detention ing against, a person for:
25		(1)	a criminal charge;
26		(2)	a suspected violation of a criminal law; or
27 28	imprisonmen	(3) nt may be	a violation of the Transportation Article for which a term of e imposed.
29	10-102.		
30	(a)	A police	e record or a court record may be expunged under this subtitle.
31 32	(b) is still maint	(1) cained, m	A court record or a police record that existed before July 1, 1975, and ay be expunged under this subtitle.

	(2) A person who is entitled to the expungement of a court record or a police record that existed before July 1, 1975, may use the procedures for expungement provided under this subtitle.				
	(3) The limitation periods provided in §§ 10-103 and 10-105 of this subtitle begin when the person becomes entitled to expungement of a court record or a police record that existed before July 1, 1975.				
7 8	before July 1	(4) , 1975, a	The custodian of court records or police records that were made nd that may be expunged under this subtitle:		
9 10	expungemen	nt; but	(i) shall make a reasonable search for a record requested for		
11 12	found after	a reasona	(ii) need not expunge a court record or a police record that is not ble search.		
13	(c)	This sub	otitle does not apply to:		
14		(1)	a record about a minor traffic violation;		
15		(2)	the published opinion of a court;		
16 17	purposes;	(3)	a cash receipt or disbursement record that is necessary for audit		
18 19	multiple def	(4) Tendant ca	a transcript of court proceedings made by a court reporter in a ase;		
20		(5)	an investigatory file; or		
21 22	solely for po	(6) olice inve	a record of the work product of a law enforcement unit that is used stigation.		
23	10-103.				
	-	ected con	n who is arrested, detained, or confined by a law enforcement unit nmission of a crime and then is released without being charged of a crime may:		
27 28	person belie	(1) eves may	give written notice of these facts to a law enforcement unit that the have a police record about the matter; and		
29		(2)	request the expungement of the police record.		
			Except as provided in paragraph (2) of this subsection, a person may this subtitle before the statute of limitations expires for all tort in the incident.		

	(2) (i) A person may give notice before the statute of limitations expires if the person attaches to the notice a written general waiver and release, in legal form, of all tort claims that the person has arising from the incident.
4	(ii) The notice and waiver are not subject to expungement.
5 6	(3) The law enforcement unit shall keep the notice and waiver at least until any applicable statute of limitations expires.
7 8	(4) The person shall give the notice within 8 years after the date of the incident.
9 10	(c) (1) On receipt of a timely filed notice, the law enforcement unit promptly shall investigate and try to verify the facts stated in the notice.
11 12	(2) If the law enforcement unit finds the facts are true, the law enforcement unit shall:
13 14	(i) search diligently for each police record about the arrest, detention, or confinement of the person;
15 16	(ii) expunge each police record it has about the arrest, detention, or confinement within 60 days after receipt of the notice; and
17 18	(iii) send a copy of the notice and the law enforcement unit's verification of the facts in the notice to:
19	1. the Central Repository;
	2. each booking facility or law enforcement unit that the law enforcement unit believes may have a police record about the arrest, detention, or confinement; and
23	3. the person requesting expungement.
	(d) Within 30 days after receipt of the notice, the Central Repository, booking facility, and any other law enforcement unit shall search diligently for and expunge a police record about the arrest, detention, or confinement.
	(e) If the law enforcement unit to which the person has sent notice finds that the person is not entitled to an expungement of the police record, the law enforcement unit, within 60 days after receipt of the notice, shall advise the person in writing of:
30	(1) the denial of the request for expungement; and
31	(2) the reasons for the denial.
34	(f) (1) (i) If a request by the person for expungement of a police record is denied under subsection (e) of this section, the person may apply for an order of expungement in the District Court that has proper venue against the law enforcement unit.





	(2) Unless the State's Attorney files an objection to the petition for expungement within 30 days after the petition is served, the court shall pass an order requiring the expungement of all police records and court records about the charge.					
4 5	(e) (1) court shall hold a hea	If the State's Attorney files a timely objection to the petition, the ring.				
	(2) If the court at the hearing finds that the person is entitled to expungement, the court shall order the expungement of all police records and court records about the charge.					
9 10	(3) If the court finds that the person is not entitled to expungement, the court shall deny the petition.					
11	(4)	The pers	son is no	t entitled to expungement if:		
12 13	a nolle prosequi, or a	(i) stet, or the		tion is based on the entry of probation before judgment, of a pardon by the Governor; and		
14		(ii)	the pers	on:		
15 16	convicted of a crime	other tha	1. n a mino	since the full and unconditional pardon or entry, has been r traffic violation; or		
17			2.	is a defendant in a pending criminal proceeding.		
20	(f) Unless an order is stayed pending an appeal, within 60 days after entry of the order, every custodian of the police records and court records that are subject to the order of expungement shall advise in writing the court and the person who is seeking expungement of compliance with the order.					
22	(g) (1)	The Stat	te's Attor	ney is a party to the proceeding.		
23 24	(2) review as provided in			d by the decision of the court is entitled to appellate e.		
25 26	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002.					